IN THE HIGH COURT OF JUDICATAURE FOR RAJASTHAN AT JODHPUR.
JUDGMENT.

M/s Vijay Solvex Limited vs. Vikas W.S. P Limited & ors.

S.B.Civil Misc. Appeal No.1495/2006 against the order dated 21.9.2006 passed by the learned District Judge, Sri Ganganagar in Civil Misc. Application No.77/2006 in Civil Suit NO.99/2006.

Date of Judgment: December 21st , 2006

PRESENT.
HON'BLE MR. PRAKASH TATIA, J.

Mr. M. Mridul, Senior Advocate with Mr. Amol Vyas for the appellant.
Mr. Rajendra Mehta for the respondent No.1.
No body appears on behalf of respondents No.2 to 5 despite service.

REPORTABLE

BY THE COURT:

This appeal is against the order of the learned District Judge, Sri Ganganagar dated 21.9.2006 passed in Civil. Misc. Application No.77/06 by which the learned trial court allowed the injunction application filed by the plaintiff-respondent no.1 and restrained respondents no.2 to 5-defendants from alienating the properties of Sri Ganganagar Cotton Complex Limited including the land, building, plant and machinery situated at Udhyog Vihar Area of RIICO, Sri Ganganagar.

Detail facts of the plaintiff's case are necessary because they are peculiar and are relevant for the purpose of decision of this appeal. The plaintiff respondent no.1 Vikas W.S. P Limited, a company registered

under the Companies Act, 1956, through its Managing Director, filed the suit for declaration and injunction and for damages against the State of Rajasthan, Secretary, Cooperative Department, Government of Rajasthan, Registrar, Cooperative Department, Government of Rajasthan and Liquidator, Sri Ganganagar Cooperative Cotton Complex Limited. The plaintiff-respondent alleged that the Liquidator of Sri Ganganagar Cooperative Cotton Complex Limited invited tenders for sale of the properties of Sri Ganganagar Cooperative Cotton Complex Limited which includes land, building, plant and machinery. For that purpose, a public notice was published in the news paper on 2.8.2005. The last date for submitting the offer was 22.8.2005. The plaintiff, in his plaint, pleaded that several persons gave their bids in pursuance of the notice inviting tenders dated 2.8.2005 but some dispute arose and one of the bidders obtained injunction order from the court. However, the plaintiff did not give any particulars of the said litigation in his plaint. According to the plaintiff, during this period of litigation, the defendants issued another notice inviting tender. The plaintiff took part in this second process of sale of the Unit and he submitted his offer on 18.10.2005 and also annexed a draft of Rs.6,00,000/- which was the earnest money. The plaintiff offered his bid of Rs.6,81,50,000/- against the reserve price of Rs. 6,75,00,000/-. As per the plaint allegations, there were only two bidders obviously, one plaintiff and for the other

bidder, the plaintiff did not give any particulars nor impleaded that second bidder as party in the suit. However, the plaintiff pleaded that another bidder had no knowledge of the business of cotton and the second bidder had his working place in another State, therefore, that second bidder already shown its unwillingness for purchase of the Unit. According to the plaint allegations, the plaintiff's earnest money of Rs.6,00,000/- was kept by the respondents for eight months because of the simple reason that according to the plaintiff, the plaintiff was the only eligible bidder and there was no other competitor. It is also submitted by the plaintiff that the plaintiff was assured time and again that his bid will be finalized and for that purpose, the process is going on. However, the plaintiff shocked when he received letter dated 11.7.2006 sent by defendant no.4-Liquidator, Sri Ganganagar Cooperative Cotton Complex Limited along with banker's cheque of Rs.6,00,000/-. By this letter, which the plaintiff received on 12.7.21006 and which was dated 11.7.2006, the Liquidator informed the plaintiff that the plaintiff's bid has been rejected and, therefore, the earnest money offered by the plaintiff is being returned to the plaintiff. According to the plaintiff, the plaintiff's bid was rejected without giving an opportunity of hearing to the plaintiff and further without assigning any reasons despite the fact that plaintiff was the only eligible bidder. The plaintiff further submitted that for acceptance or rejection of the

offer, the State Government was to appoint a High Level Committed and that committee alone had jurisdiction to accept or reject the bid but according to the plaintiff, no such committee was constituted by the State Government nor any meeting was convened by the committee, therefore, the order of rejection of plaintiff's bid issued by defendant no.4 is unauthorised and without jurisdiction. It is further submitted that the said rejection was for extraneous consideration.

The plaintiff though challenged the respondent no.4's communication dated 11.7.2006 on the grounds mentioned above but along with said challenge, the plaintiff submitted that the defendants by keeping Rs.6,00,000/- of the plaintiff which he submitted as earnest money in pursuance of the notice inviting tenders, caused monetary loss to the plaintiff. The plaintiff further pleaded that the plaintiff has right to enforce his right (without disclosing what were those rights), which according to him, accrued to him because of defendants' retention Rs.6,00,000/- for eight months and, therefore, he has a right to initiate legal proceedings and for that civil right, the only civil court has jurisdiction. The plaintiff further claimed that the plaintiff is entitled to claim damages which he suffered because of illegal retention of Rs.6,00,000/- by the defendant for eight months. It will be worthwhile to mention here that the plaintiff though challenged the rejection of plaintiff's offer vide letter dated 11.7.2006 but did not seek any

consequential relief of getting the contract in his favour or defendant be directed to consider the bid of plaintiff and transfer the assessts of the said complex in plaintiff's favour and he only sought relief of declaration that it may be declared that by letter of the defendant no.4 dated 11.7.2006, the plaintiff's bid has not been rejected. In the relief paragraph of the plaint, the plaintiff claimed Rs.60,000/- as damaged because of illegal retention of Rs.6,00,000/- by the defendants for 8 months. In addition to above, the plaintiff sought decree for injunction that till the plaintiff's legal rights are determined, the respondents be restrained from selling/transferring the property of Sri Ganganagar Cooperative Cotton Complex Limited.

The appellant i.e. M/s Vijay Solvex Limited, who was the another bidder for the properties of Sri Ganganagar Cooperative Cotton Complex Limited, submitted an application under Order 1 Rule 10, C.P.C. before the trial court for being impleaded as party in the suit filed by the plaintiff which was allowed by the trial court vide order dated 1.9.2006 and thereby the appellant became party defendant no.5 in the civil original suit.

The plaintiff, after impleading the appellant as party in the suit in pursuance of the trial court's order dated 1.9.2006, submitted an application under Order 6 Rule 17, C.P.C. and sought permission to amend the plaint. By this amendment application, the plaintiff

incorporated para 11-A and 11-B in the plaint.

The facts pleaded by amendment are very important and relevant for the purpose of deciding this appeal because of the reason that the plaintiff materially altered his case by amending the suit. The plaintiff added new grounds to challenge the action of the defendants, the Government authorities and other defendants. The plaintiff in the amended plaint, contradicting his stand about not constituting of the High Level Committee for the purpose of sale of the properties of the Unit by the State Government, admitted in the amended plaint that the State Government by order dated 5.3.2005, constituted High Level Committee consisting of seven members which includes: (1) the Principal Secretary, Cooperative Department,Govt. of Rajasthan, (2) a Representative of the Finance Department (not less than cadre of Deputy Secretary), (3) The Registrar, Cooperative Society, Govt. of Raj., (4) the District Collector, Sri Ganganagar, (5) the Managing Director, Rajasthan State Cooperative Bank Ltd., (6) the Representative of RIICO, the Chairman and the Managing Director of Spin fed, Jaipur. After admitting constitution of this committee, the plaintiff took new grounds that the committee was competent to take decision upto 4.9.2005 because of the reason that the committee was constituted for the period upto 4.9.2005. It is also submitted by the plaintiff that the State Government directed the committee to decide the matter of sale of the

properties of Sri Ganganagar Cooperative Cotton Complex Limited within a period of six months. The committee failed to take decision in time, therefore, all subsequent decisions are illegal.

The plaintiff, who in his initial plaint founded his claim on the basis of the subsequent bid, that is in pursuance of the notice inviting tender after 4.9.2005, changed his stand and submitted that the said committee had no even jurisdiction to invite tenders on 7.9.2005 and challenged his own any right which the plaintiff was claiming on the basis of his bid. The plaintiff contradicting his own original pleading in amended plaint, admitted that High Level Committee was constituted by the State. In the amended plaint there is reference of one meeting dated 31.8.2005 of the said High Level Committee and proceedings of that meeting dated 31.8.2005 also has been challenged by the plaintiff in the amended plaint by saying that in the meeting dated 31.8.2005 the minimum corum was not and, therefore, the meeting was illegal and hence any decision taken in the meeting dated 31.8.2005 is wrong. This plea has been taken by the plaintiff because of the reason that in the meeting dated 31.8.2005, reason for cancellation of earlier proceedings taken for transfer of the property of Sri Ganganagar Cooperative Cotton Complex Limited is recorded. The plaintiff, for the reasons best known to it and probably to support unsuccessful bidder in earlier tender proceedings, submitted that the offer which was given by one M/s Vikas

Chemi Gum(India) Ltd. during negotiation of Rs.6,75,00,000/- and another sent by the same company by Fax dated 1.9.2005 of Rs. 8,01,11,111/- is a valid offer till today because of the reason that the respondents did not return the earnest money of Rs.3,00,000/- deposited by the said M/s. Vikas Chemi Gum (India) Ltd. despite the dismissal of the injunction order by the High Court by order dated 29.3.2006.(the order dated 29.3.2006 is order of dismissal of writ petition of M/s Vikas Chemi Gum (India) Ltd. The plaintiff, for the reasons best known to him, in the amended plaint, further pleaded that in view of the above facts, the first right of the said M/s Vikas Chemi Gum (India) Ltd. is there.(despite dismissal of writ petition by the High Court.) The plaintiff further pleaded in the amended plaint that the decision of the said committee cannot be treated to be validly approved decision in accordance with the Govt. order dated 5.3.2005. In the light of above facts, according to the plaintiff, the defendant's effort to sell the properties of Sri Ganganagar Cooperative Cotton Complex Limited is illegal. In addition to above, the plaintiff further pleaded that the defendants have sold the properties of Sri Ganganagar Cooperative Cotton Complex Limited for a consideration of Rs.8,01,00,000/- against the offer of M/s Vikas Chemi Gum (India) Ltd. of Rs. 8,01,11,111/- and thereby defendants caused loss (of Rs.11,111/- only in a transaction of Rs.8,00,00,000/-) to public exchequer. On this ground, the plaintiff

pleaded cancellation of decision passed in favour of the appellant-defendant no.5. (Though in preceding para 11-A the plaintiff specifically mentioned that the plaintiff impleaded the defendant no.5 appellant in the suit because of the order passed by the trial court to implead him as party and the plaintiff is not seeking any relief against the defendant no.5 in the suit.)

The above facts are the facts which were originally pleaded by the plaintiff and the facts which are subsequently pleaded by the plaintiff. In a case for grant of injunction, conduct of the party seeking injunction is very important and relevant. From the pleadings pleaded by amendment of the original plaint itself, it appears that the plaintiff at one time, by filing the suit in the court of law before the trial court, founded his claim on the basis of second round for sale of the properties of Sri Ganganagar Cooperative Cotton Complex Limited, with specific plea that his offer was of Rs.6,81,50,000/- and further submitted in para 6 of the plaint that the plaintiff alone was eligible candidate for getting the contract in his favour without disclosing the fact of offer of defendant no.5 which was of Rs,8,01,00,000/- and without impleading the defendant no.5 as party in the suit and sought relief of injunction against the sale of the properties of Sri Ganganagar Cooperative Cotton Complex Limited and for which decision was already taken by the respondents before suit was filed. The plaintiff was fully aware that he

could not have withdrawn his admissions made in the pleadings as pleaded in the original plaint, did not seek amendment in the other paras of original plaint which were contrary to the stand taken by the plaintiff in the amended plaint.

After going through the facts of the case, pleadings of the parties, documents placed on record, the relief claimed by the plaintiff and after examining the plaintiff's right and particularly conduct of the plaintiff, this Court is of the view that it is a grave example of how the process of court can be abused and to what extent the litigants can put forward their pleadings in court of law without any fear of any action against them. Not only this but this Court is constraint to observe that the trial court even did not look into the facts pleaded by the plaintiff nor the documents placed before the court below by the parties and further grave is that the trial court failed to look into the judgment of this Court delivered in S.B.Civil Writ Petition NO.5834/05 dated 29.3.2006 and issued injunction against sale of the properties of more than Rs.8,00,00,000/- in a case where plaintiff's entire claim is money claim that too of Rs.60,000/- in the light of the facts pleaded by the plaintiff in the plaint itself wherein he has admitted that he gave bid of Rs.6,81,50,000/- only whereas the bid of third party (not impleaded in suit) gave bid of Rs.8,01,11,111/- and according to the plaintiff that was valid and is valid till today and bid of defendant no.5 is of more than

Rs.8,00,00,000/- against the plaintiff's bid of Rs.6,81,50,000/- and in a case where the sale in favour of the party defendant no.5 became final as the plaintiff specifically pleaded that the plaintiff is not challenging the sale in favour of defendant no.5, still the court has granted injunction against the sale of the property when amount of Rs.8,01,00,000/- has already been deposited by defendant no.5 for purchasing the property in dispute. Therefore, this Court will first deal with the facts of the case in detail coming out from the plaintiff's case only which alone without considering the case of the defendants and which were sufficient for rejection of plaintiff's injunction application being frivolous.

The plaintiff in his original plaint, sought relief of injunction against the sale of the properties of Sri Ganganagar Cooperative Cotton Complex Limited on the basis of his alleged right which has not been disclosed in the plaint originally filed or subsequently filed by incorporating para 11-A and 11-B. The plaintiff kept the pleading made in paras 5 and 6 as pleaded originally in the amended plaint also and originally did not plead that who was the second bidder and that second bidder gave bid of Rs.8,01,00,000/-, despite the fact that as per the facts pleaded in paras 5 and 6, the plaintiff gave bid of Rs.6,81,50,000/- only against defendant No.5's bid of Rs.8,01,00,000/- and still the plaintiff submitted that the plaintiff was the only eligible candidate.

After suppressing above facts, the plaintiff's plea in para 6 in relation to "other bidder" i.e. defendant no.5 is that that other unit already shown its unwillingness in taking the properties of Sri Ganganagar Cooperative Cotton Complex Limited. Without there being any explanation, the plaintiff's plea in para 11-B admitted that defendant no.5 gave bid of Rs.8,01,00,000/- and the respondent had already, before filing of the suit by the plaintiff, accepted bid of the defendant-appellant. Another serious contradiction remained in the plaint is that in para 9 of the plaint it is mentioned that the State Government never constituted High Level Committee for the purpose of sale of the properties of Sri Ganganagar Cooperative Cotton Complex Limited which is the pleading contrary to the facts admitted in para 11-A specifically. The plaintiff, in rest of the paras of the plaint, submitted that because he gave offer of Rs.6,81,50,000/-, therefore, "right accrued in his favour" and in para 11-A, he pleaded that offer of M/s Vijay Chemi Gum (India) Ltd. given during negotiation and by Fax dated 1.9.2002 of Rs.8,01,11,111/- is valid offer till today. The case of M/s Vikas Chemi Gum(India) Ltd. was pladed by the plaintiff despite the fact that the writ petition of Vikas Chemi Gum (India) Ltd. has been dismissed by the High Court for this very bid on 29.3.2006, more than three months before plaintiff's filing original suit before the court below and six months before filing amended plaint. The plaintiff even pleaded self-contradictory facts and

grounds in para 11-A and 11-B of the plaint. In para 11-A, the plaintiff categorically stated that the defendant no.5 has been impleaded as party in the suit by the plaintiff only because of the reason that the court has passed the order to implead defendant no.5 as party in the suit and further categorically stated that the plaintiff is not seeking any relief against defendant no.5. Contradicting this, the plaintiff in para 11-B specifically pleaded that sale of the properties of Sri Ganganagar Cooperative Cotton Complex Limited for consideration of Rs.8,01,00,000/- in favour of defendant no.5 deserves to be cancelled being illegal and against the public interest and being against the interest of M/s Vikas Chemi Gum (India) Ltd who was only eligible for the purchase of the property of Sri Ganganagar Cooperative Cotton Complex Limited. Further contradiction in the pleading is that the plaintiff's entire case is founded upon his offer given in pursuance of the second notice inviting tender which was issued in the month of September, 2005 and claimed his right on the basis of his said alleged valid offer but in para 11-A and 11-B, destroying his own case, pleaded that the proceedings taken in pursuance of the first notice inviting tender dated 2.8.2005 are valid (wherein the plaintiff did not participate) and further the Committee could have no jurisdiction to invite fresh tenders (which was submitted by the plaintiff and his bid under this second notice inviting tender is foundation of claim of

plaintiff). The plaintiff not only pleaded the fact and the grounds in the plaint against the settled principles of law that there may be alternate pleas in certain circumstances but cannot be self-destructive pleadings. The plaintiff even pleaded against the decision of the High Court given in M/s Vikas Chemi Gum (India) Ltd. in the writ petition which was dismissed by the High Court on 29.3.2006 and submitted that the offer of M/s Vikas Chemi Gum(India) Ltd. is valid and is in force till today. The plaintiff claimed relief in the suit that the plaintiff's bid has not been cancelled by the competent authority and, therefore, it may be declared that the plaintiff's bid still has not been rejected by the respondent despite his pleading ,that offer of M/s Vikas Chemi Gum (India) Ltd. is valid offer and offer of M/s Vikas Chemi Gum (India) Ltd. is of more than Rupees eight crorers against the plaintiff's bid of Rupees six crores plus.

Copy of the order passed by the trial court allowing the amendment application dated 21.9.2006 also has been provided by the learned counsel for the appellant for perusal of this Court. It appears from the order dated 21.9.2006 that the plaintiff, in his application, for amendment of the plaint also stated that plaintiff is not seeking any relief against the newly added defendant no.5 in the suit and after stating so, the plaintiff submitted that since defendant no.5 has been impleaded as party, therefore, he is seeking amendment in the plaint by

incorporating para 11-A and 11-B as referred above. The order dated 21.9.2006 has not been challenged by any party and has become final but the fact is required to be taken note of is that in such situation, how the plaintiff could have justified earlier proceedings taken in pursuance of earlier notice inviting tender dated 2.8.2005 and had right to plead the case of M/s Vikas Chemi Gum (India) Ltd and that too against the judgment of the High Court delivered in the case of M/s Vikas Chemi Gum (India) Ltd. in the writ petition decided on 29.3.2006.

The contradictory and self-destructive pleadings are not all what has been mentioned above, but more shocking is that the plaintiff submitted written synopsis before the trial court which is dated 20.9.2006. The facts mentioned in the written synopsis are shocking and more shocking is that such a fact has been accepted by the trial court while deciding injunction application of the plaintiff. In written synopsis, in para 7, the plaintiff submitted that the plaintiff-company gave bid of Rs,8,01,11,111/- on 1.9.2005 and that offer was given by the plaintiff during valid period of High Level Committee and that offer has not been rejected by defendant no.4 nor the security amount deposited for this offer has been returned to the plaintiff. The plaintiff further very specifically and categorically in para 7 of the written synopsis stated that in view of the above facts, the plaintiff has first right to purchase the properties of Sri Ganganagar Cooperative Cotton Complex

Limited for a consideration of Rs.8,01,11,111/- and further submitted that in view of this fact, the interim order which was passed by the trial court may be confirmed. The fact is against the plaintiff's own entire case pleaded in the plaint, as the plaintiff's case in the suit is that his offer was of Rs.6,81,50,000/- and it was never the case of the plaintiff that his bid was of Rupees eight crorers and odd at any point of time, either in first bid or in second bid. Not only this but the plaintiff's specific case in the plaint is that he participated only in second notice inviting tender and he gave bid of Rs.6,81,50,000/- only and deposited security money of Rs.6,00,000/- along with tender form on 18.10.2005.

The plaintiff's case in detail and the trial court's impugned order have been considered by this Court in detail without the help of the replies filed by the defendant-appellant and other respondents. As stated above, the initial burden was upon the plaintiff to prove his case by pleading the facts and by placing on record the material evidence before the court of law. If facts disclosed by the plaintiff applicant seeking equitable relief are sufficient for the purpose of denying the relief to the plaintiff, the weakness of the defendant (which is not in this case) cannot be a ground for equitable relief in favour of the applicant. How these broad facts have not been looked into by the court below, is strange. It appears that the court below even did not apply its mind to the facts mentioned in the plaintiff's plaint itself which,

therefore, are mentioned above. The court below failed to look into the grounds on the basis of which the plaintiff sought injunction against the sale of the properties of Rs.8,00,00,000/- by auction through High Level Committee constituted by the State. The plaintiff in his entire plaint, originally and thereafter in amended plaint, nowhere stated that he has not encashed the banker's cheque of Rs.6,00,000/-, his earnest money given with his offer in tender which has been sent to it by defendant no.4-the Liquidator of Sri Ganganagar Cooperative Cotton Complex Limited. The inference can be drawn from the facts which have been pleaded by the plaintiff about encashment of Rs.6,00,000/-, the earnest money amount, deposited by the plaintiff and returned by defendant no.4. The plaintiff deposited Rs.6,00,000/- on 18.10.2005 and has filed the suit on 15.7.2006 (as per the date typed on the plaint, copy of which has been provided for perusal of this Court by the parties). The plaintiff pleaded that the defendants have retained plaintiffs Rs.6,00,000/- for eight months then, after eight months the money is not with defendant no.5 is clear. And he prayed damages because of illegal retention of Rs.6,00,000/- of the plaintiff for eight months. The plaintiff claimed specific damages of Rs.60,000/- on this amount and has not pleaded that he has not encashed banker's cheque of Rs.6,00,000/- for any lawful reason and he is entitled to further interest or damages. Meaning thereby, the plaintiff must have withdrawn Rs.6,00,000/- sent

by the defendant. Then the entire claim of the plaintiff in the suit is only money claim and that too for only Rs.60,000/-. And in view of the fact that according to the plaintiff himself as pleaded in para 11-A and 11-B, valid offer for the bid was of M/s Vikas Chemi Gum(India) Ltd. and as per plaintiff's own case, the respondent could not have invited tender second time, then plaintiff's own case is that his offer/bid was not legal. Then in such situation, on what basis the plaintiff sought relief of injunction against the transfer of property of more than Rs.8,00,00,000/- on account of his total claim of Rs.60,000/-?

The plaintiff in a suit for declaration and injunction and for damages, did not claim consequential relief. In view of the pleadings of the plaintiff in para 11-A and 11-B, he cannot seek relief of transfer of properties of Sri Ganganagar Cooperative Cotton Complex Limited in its favour. Then the plaintiff's suit for declaration that his offer has not been rejected by the letter dated 11.7.2006 is a relief of declaration is of no consequence, rather say not tenable, therefore, prima facie, the suit of the plaintiff itself was not maintainable for such declaration.

Though the plaintiff's injunction application should have been rejected by the trial court only in view of the facts pleaded by the plaintiff in his plaint and looking to his conduct and because of the fact that the plaintiff successfully mislead the trial court by submitting in writing, a written synopsis, that the plaintiff gave bid of

Rs.8,01,11,111/-, still it will be appropriate to mention facts which clearly demonstrate that the plaintiff has filed the suit by suppressing all the material facts. The defendants have placed on record the copy of the advertisement dated 7.9.2005 inviting fresh tender for sale of the Unit, copy of the tender form and terms and conditions for sale of the properties of Sri Ganganagar Cooperative Cotton Complex Limited, copy of the interim order passed by this Court in S.B.Civil Writ Petition No.5834/05 in the writ filed by M/s Vikas Chemi Gum (India) Ltd. dated 28.9.2005 whereby the High Court restrained the respondents from finalising the sale of Sri Ganganagar Cooperative Cotton Complex Limited in pursuance to the notice inviting tender published in the Rajasthan Patrika in its edition dated 7.9.2005, copy of the order of the State Government dated 5.3.2005 whereby High Level Committee was constituted, reference of which has been given in the preceding paras, copy of the minutes dated 15.9.2005 wherein there is reference of earlier meeting of the High Level Committee on 31.8.2005 and consideration recorded about the sale proceeding taking a decision for cancellation of bids submitted in pursuance of the notice inviting tender dated 22.8.2005 and decision of inviting fresh tender, copy of the letter given by M/s Vikas W.S.P. Ltd dated 22.12.2005, copy of the decision of the High Court dated 29.32005 given in the S.B.Civil Writ Petition NO.5834/05, copy of the minutes of meeting dated 4.5/4/06 recorded

on 13.6.2006 taking a decision to sell the properties of Sri Ganganagar Cooperative Cotton Complex Limited to the appellant and copy of the acceptance letter accepting the bid of the appellant issued on 5.7.2006. The defendants also placed on record relevant documents which are of appellant sent to the defendants, copy of the order of the State Government extending the term of the High Level Committee upto June, 2006.

The documents placed on record by the defendants and the appellant disclose that in fact High Level Committee was constituted by the State Government for the purpose of sale of the property of Sri Ganganagar Cooperative Cotton Complex Limited by order dated 5.3.2005. It was constituted specifically for the period upto the time, properties of Sri Ganganagar Cooperative Cotton Complex Limited are sold out by auction. However, in the guidelines it has been mentioned that this sale proceedings may be completed within six months and in view of the specific order of the State Government that Committee has been constituted upto the sale of the properties of Sri Ganganagar Cooperative Cotton Complex Limited takes place, the guidelines directing the Committee to complete the sale proceedings within six months is only guideline and not essence or order fixing the term of Committee only for six months. However, that period also has been extended by the Government by order dated 20.6.2006. The order dated

5.3.2005 and 20.6.2006 are not under challenge in the suit. Further the trial court did not consider the letter of the plaintiff dated 27.12.2005 which clearly reveals that even in the month of December, 2005, the plaintiff withdrew his bid itself and had knowledge about pending writ in relation to sale of the properties of Sri Ganganagar Cooperative Cotton Complex Limited. The plaintiff by letter dated 27.12.2005 itself demanded refund of Rs.6,00,000/-. In this letter the plaintiff stated that in case the amount will not be refunded to the plaintiff, the plaintiff will take shelter of law for claiming accrued interest on Rs.6,00,000/- deposited by the plaintiff with defendant no.4. This fact was not disclosed by the plaintiff in his plaint and that goes to root of the plaintiff's claim. The bid of plaintiff was not in existence after 27.12.2005. The entire claim in this transaction of the plaintiff was claim of interest over Rs.6,00,000/- and no claim of plaintiff for his bid or for purchase of Unit survived. The suit for injunction against transfer of properties of the properties in dispute has been filed by the plaintiff in the month of July, 2006,i.e. after six months from the plaintiff's letter dated 27.12.2005 and after four months from the dismissal of the writ petition of M/s Vikas Chemi Gum (India) Ltd. By this Court on 29.3.2006.

It appears from the order of the court below that while deciding question of prima facie case, the trial court did not consider any of the

documents submitted by the defendants, not even the letter of the plaintiff dated 27.12.2005 by which the plaintiff withdrew its bid for purchase of properties of Sri Ganganagar Cooperative Cotton Complex Limited and claimed refund of Rs.6,00,000/-, the amount of earnest money from the respondent and interest thereon and thereby he withdrew himself from the competition in getting the properties of Sri Ganganagar Cooperative Cotton Complex Limited. The trial court even did not consider the order of the State Government dated 20.6.2006 nor applied its mind to the order of the Government dated 5.3.2005 constituting High Level Committee for sale of the properties of Sri Ganganagar Cooperative Cotton Complex Limited and, therefore, failed to notice that the Committee was constituted with specific purpose upto the sale of the properties of Sri Ganganagar Cooperative Cotton Complex Limited. The trial court did not appy its mind what is the right of the plaintiff in the properties of Sri Ganganagar Cooperative Cotton Complex Limited or the plaintiff's right seeking relief of injunction against the sale of the properties of Sri Ganganagar Cooperative Cotton Complex Limited. In the opinion of this Court there is no single ground even for namesake on the basis of which the plaintiff could have filed injunction application against the sale of the properties of Sri Ganganagar Cooperative Cotton Complex Limited. In the entire plaint or in injunction application and if claim of the plaintiff is examined with

reference to its own letter dated 27.12.2005, the plaintiff's only claim is with respect to the payment of Rs.6,00,000/-, which already has been sent to the plaintiff by banker's cheque before plaintiff filed the present suit and of interest over Rs.6,00,000/- that too for the period of eight months which the plaintiff itself assessed Rs.60,000/- only, then how the court could have granted the injunction against the sale of the properties of more than rupees eight crorers for protection of plaintiff's money claim of Rs.60,000/- only. And that too in a case where the sale proceedings already completed in favour of defendant no.5 before filing the suit by the plaintiff before the trial court and above all, the plaintiff himself in his plaint, very specifically submitted that he is not claiming any relief against defendant no.5, thereby he is not challenging the sale of the properties in favour of defendant no.5.

In the background of these facts which are coming from the record itself, if the arguments of the learned counsel for the parties are considered then the appellant's grievance is against the order of the trial court granting injunction which I need not to refer in detail now The argument of the learned counsel for the respondent-plaintiff is that the plaintiff's bid was of Rs.8,01,11,111/- but could not justify even that argument in the light of the plaintiff's own case pleaded. The learned counsel for the respondent-plaintiff also submitted that the order of the State Government dated 5.3.2005 constituting the Committee contains a

condition that the sale proceedings shall be completed within a period of six months by the Committee and, therefore, the term of the Committee already expired on 5.9.2005 and the State Government extended the term of the Committee by order dated 20.6.2006, which was for the Committee whose term has already expired. According to the learned counsel for the respondent-plaintiff, after six months from 5.3.2005, the Committee could not have issued the notice inviting tender. The argument deserves to be rejected only on the ground that the order extending time of the Committee by the State Government dated 20.6.2006 is not under challenge in the suit by which the term of the Committee has been extended to June, 2006 in place of six months from 5.3.2005. Otherwise also, the term of the Committee is fixed in the first part of the order of the State Government and not subject to the condition mentioned below the order dated 5.3.2005 which prescribed the procedure for sale of the properties of Sri Ganganagar Cooperative Cotton Complex Limited. Be it as it may be, there was no explanation for the letter dated 27.12.2005 of the plaintiff by which he withdrawn his bid. The learned counsel for the respondent-plaintiff though tried to support the judgment but could not give any explanation what was the right of the plaintiff to seek relief of injunction against the alienation of the properties by the State in favour of defendant no.5 when the plaintiff in his plaint categorically stated that the plaintiff is

not seeking any relief against defendant no.5. The learned counsel for the respondent tried to submit that there was no meeting held on 31.8.2005 and there is mention in the minutes dated 15.9.2005 that the meeting was held on 31.8.2005 and wherein a decision was taken. According to the learned counsel for the respondent-plaintiff, if the decision was taken in the meeting of 31.8.2005 then what was the reason for drawing the minutes on 15.9.2005. It is also submitted that it was decided that the tender will be invited by issuing notice in National newspaper like Indian Trade Journal and Economics Times and in all editions of those news papers but the advertisement was not issued in these two news papers. The arguments deserves to rejected because of simple reason that the plaintiff's own case is that plaintiff is not seeking relief against successful bidder defendant no.5-appellant and the plaintiff himself has no locus standi to challenge the bid. The difference of amount which has been projected by the plaintiff from the two bids is of Rs. 11,111/- in a sale contract of more than rupee eight crorers. The plaintiff himself gave his bid of Rs,6,81,50,000/- only. Therefore, the argument has been raised to only forestall the sale of the properties of Sri Ganganagar Cooperative Cotton Complex Limited for which decision was taken by the High Level Committee of six high ranking officers and there is no allegation of any malafide or there is no allegation in the plaint that more price could have been recovered by the sale of the

properties of Sri Ganganagar Cooperative Cotton Complex Limited.

In the light of above, this Court holds that the plaintiff filed the injunction application on absolutely frivolous and non-existant grounds with ulterior motive and abused the process of the court and has deliberately suppressed the facts from the court of law and the application has been filed with ulterior motive and to put obstruction against the sale of the properties and deliberately did not implead defendant no.5 as party in the suit and submitted false and contradictory pleadings before the court of law and successfully mislead the court by submitting wrong facts in written submissions which were accepted by the trial court even without reading the plaint itself, apart from the other documents causing serious loss to defendant no.5 in a case where the claim of other party who gave much higher bid than plaintiff's bid, was rejected by this Court in that party's writ petition (i.e. By order dated 29.3.2006 in S.B.Civil Writ Petition NO.5834/05).The plaintiff failed to plead a single ground for seeking injunction either in his plaint or in injunction application. The plaintiff, after withdrawal of his bid, sought relief of declaration that his bid has not been cancelled. The plaintiff without any authority, tried to become spokes of M/s Vikas Chemi Gum (India) Limited and tried to take benefit of that party's offer for plaintiff's benefit to mislead the trial court, therefore, the plaintiff-respondent is liable to suffer an exemplary cost of Rs.25,000/-.

Much has already been said about the order of the trial court dated 21.9.2006 and keeping judicial restraint in mind , less has been said by this Court. The order of the trial court is absolutely perverse, capricious and has been passed without appreciation of even the case of the plaintiff what to say of merit in the case of the plaintiff and by not looking into the documents placed on record by the parties.

In view of the above reasons, the appeal of the appellant is allowed. The order of the trial court dated 21.9.2006 is set aside and the injunction application filed by respondent no.1-plaintiff is dismissed. The cost of Rs.25,000/- is imposed upon the plaintiff-respondent which shall be payable to the appellant as the appellant has already paid more than rupee eight crores to the respondent-State.

(PRAKASH TATIA),J.

mlt.